

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PETER SWALLOW,

Case No. C-08-02311 JCS

Plaintiffs,

v.

**ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO FILE FIRST
AMENDED COMPLAINT [Docket No. 12]**

TOLL BROTHERS, INC.,

Defendant.

On May 5, 2008, Defendant, Toll Brothers, Inc. ("Toll Brothers"), removed this employment action from the Contra Costa County Superior Court. The parties have consented to the jurisdiction of a United States magistrate judge pursuant to 28 U.S.C. § 636(c). On June 20, 2008, after Plaintiff had received a Right-to-Sue letter as to his age discrimination claim from the California Department of Fair Employment and Housing ("DFEH"), Plaintiff filed a Motion for Leave to File First Amended Complaint (the "Motion"). The proposed First Amended Complaint adds an age discrimination claim under the California Fair Employment and Housing Act ("FEHA") and claims for breach of contract and breach of the implied covenant of good faith and fair dealing. All of the claims arise out of Plaintiff's termination by Toll Brothers. For the reasons stated below, the Motion is GRANTED. The hearing on the Motion scheduled for **August 29, 2008, at 1:30 p.m.**, is VACATED. However, the hearing on Defendant's Motion to Compel Arbitration that is scheduled to occur at the same time REMAINS on calendar.

Rule 15 of the Federal Rules of Civil Procedure provides that the Court "should freely give leave [to amend] when justice shall require." Fed. R. Civ. P. 15(a)(2). While the standard under Rule 15(a) is liberal, the court may deny a motion for leave to amend where permitting an

1 amendment would cause “undue delay in the litigation or prejudice the opposing party.” *Zivkovic v.*
2 *S. California Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002). Toll Brothers opposes the Motion on
3 the basis of the conclusory assertion that Plaintiff is engaging in “dilatory tactics by prolonging the
4 litigation.” However, Toll Brothers has not identified any specific prejudice that would arise from
5 permitting the amendment or offered an explanation as to how the instant motion will give rise to
6 “undue delay.” Nor has Toll Brothers pointed to case authority suggesting that it would be anything
7 *other* than an abuse of discretion by this Court to deny the motion, given that the case is at a very
8 early stage, there has been no discovery and no motions on the merits have been filed. Accordingly,
9 Plaintiff shall be permitted to file the proposed First Amended Complaint.

10 IT IS SO ORDERED.

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12 Dated: July 30, 2008

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14 JOSEPH C. SPERO
15 United States Magistrate Judge
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